

REMARKS

With the foregoing amendment claims 1-35 are pending in the application. Claims 1, 12, 16, 18, 27, and 29 are independent. No new matter has been added by the amendments. Applicants respectfully request reconsideration of the Rejections/Objections, which are discussed below.

Allowable Subject Matter

Applicants thank the Examiner for indicating that claim 31 would be allowable if re-written in independent form.

Rejections of Claims 1-3, 6-8, 12, 16, 18-20, 22-25, 27, 29 and 32-34 under 35

U.S.C. §102

Claims 1-3, 6-8, 12, 16, 18-20, 22-25, 27, 29 and 32-34 stand rejected under 35 U.S.C. 102(b) as being anticipated by Cluts (US 5,616,876) (hereafter "Cluts"). Applicants respectfully disagree.

Independent Claim 1

With respect to independent claim 1, Cluts does not anticipate claim 1 because Cluts does not disclose all of the features of claim 1. For example, at the least, Cluts does not disclose:

- [a] receiving a broadcast recording over a broadcast channel;
- [b] playing the received broadcast recording;
- [c] receiving an indication that the user likes the received broadcast recording while the received broadcast recording is being played; and
- [d] modifying at least one of the one or more channel profiles in response to receiving the indication.

as is recited in claim 1 (emphasis added)

The Office contends that Cluts discloses this feature. In support of its contention, the Office cites to the following portion of Cluts:

The playlist screen display 500 also provides a list button 535, which may be used to display a list of the songs that are included in the current playlist and to jump to another song in the playlist. FIG. 6 shows a screen display 600 with a pop-up list 605, which is displayed when the subscriber activates the list button 535 on the playlist screen display 500. Each entry in the list includes the title of the song and the artist. In the preferred audio on demand system, the list displays ten (10) of the songs in the current playlist. The subscriber may use the directional control on the remote control unit to scroll through all of the songs in the playlist. The subscriber may also select any of the songs in the playlist by using the directional control to highlight the desired song and pressing the action button (on the remote control unit, FIG. 3). After the subscriber selects a song from the list 605, the system returns to the playlist screen display 500. At that point, the newly selected song begins to play, and the song's title and artist are displayed in the song title box 520 and artist box 525, respectively.

The playlist screen display of FIG. 5 also includes a "more" button 540, a "like" button 545, and a "dislike" button 550. The "more" button 540 is used to activate the "more like" music search function, which is described below. The subscriber may add the currently playing song to a playlist called "my favorites" by activating the "like" button 545 while a song is playing. If the user does not like the current song, the subscriber may activate the "dislike" button 550 while the song is playing. Once the subscriber indicates the song is disliked, the audio on demand system will never play that song again for the subscriber. This is true without regard to where the song is found. In the preferred audio on demand system, the only way for a subscriber to again listen to a song has been labeled as disliked is to select that specific song using the find button on the initial screen display (FIG. 4).

Cluts at col. 13, lines 44 to col. 14, line 11.

- (1) The above portion of Cluts does not disclose "a broadcast recording."

Applicants respectfully submit that the above portion of Cluts does not disclose that the user "receives a broadcast recording over a broadcast channel," as is required by claim 1.

Rather, Cluts discloses the user receiving an "on-demand" recording over an "on-demand" channel. As is clear from the above portion of Cluts, Cluts discloses nothing more than a conventional "on-demand system." As the above portion of Cluts demonstrates, the

user may “select a song from [a] list 605,” and after the user selects the song, “the selected song begins to play.” Accordingly, it is clear that Cluts discloses the user receiving an “on-demand” recording over an “on-demand” channel, as opposed to receiving “a broadcast recording over a broadcast channel,” as is required by claim 1.

By definition, a “broadcast recording” is a recording that is broadcast. For example, it is a recording that is sent to multiple unspecified users simultaneously so that each of the multiple users can listen to the recording. This is the well-known definition of the term “broadcast.” See e.g., Webopedia, <http://www.webopedia.com> (defining broadcast to mean “to simultaneously send the same message to multiple recipients”); and The Free On-Line Dictionary of Computing, <http://foldoc.org>, (defining broadcast to mean “a transmission to multiple, unspecified recipients”).

In contrast, a recording transmitted from an “on-demand system,” by definition, is not broadcast. Rather, a recording transmitted by an on-demand system is transmitted to a single recipient (i.e., it is transmitted to the device that requested the recording).

Accordingly, Applicants respectfully submit that the above portion of Cluts discloses nothing more than an on-demand system transmitting a recording to a single user (i.e., the user that selected the recording), not multiple users simultaneously. Thus, the above portion of Cluts does not disclose “a broadcast recording.” For this reason alone, the rejection of claim 1 should be withdrawn.

- (2) The above portion of Cluts does not disclose “modifying ...
[a] channel profile in response to receiving [an] indication
that the user likes the received broadcast recording.”

Applicants respectfully submit that Cluts does not disclose “modifying ... [a] channel profile in response to receiving [an] indication that the user likes the received broadcast recording.”

Cluts discloses that “[t]he subscriber may add the currently playing [on-demand song] to a playlist called ‘my favorites’ by activating the ‘like’ button 545 while a song is playing.” Applicants respectfully submit that adding a song to a playlist is not the same as “modifying a channel profile” because a “channel profile” is separate and distinct from a

“playlist.” A “playlist” is merely a list of recordings (e.g., songs or music videos). In contrast, a channel profile contains information that enables a computer or a user to create a playlist. Claim 35 makes this clearly evident. Claim 35, which depends from claim 1, requires the step of “creating a playlist based on information contained in one of the channel profiles.”

Moreover, the Court of Appeals for the Federal Circuit has stated that different words in a claim should be given different meanings, unless there is a compelling reason to give them the same meaning. See Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1119 (Fed. Cir. 2004). Accordingly, based on well established Federal Circuit precedent, it is incorrect for the Office to interpret the term “channel profile” such that it encompasses “a playlist,” because both terms appear in the same claim, it is evident from the context of the claim that a channel profile is separate and distinct from a profile, and it is clear from the claim and specification that the applicants never intended a channel profile to encompass a playlist.

Accordingly, Applicants admit that Cluts discloses modifying a playlist in response to a user indicating that the user likes an on-demand recording, but respectfully submits that Cluts does not disclose modifying a “channel profile” in response to receiving the indication that the user likes the received broadcast recording.” For this additional reason, the rejection of claim 1 should be withdrawn.

Dependent Claims 2-3 and 6

Claims 2-3 and 6 depend from claim 1. Thus, these claims are patentable over Cluts for at least the same reasons given above with respect to claim 1.

Dependent Claim 7

With respect to dependent claim 7, claim 7 is not anticipated by Cluts because Cluts does not teach or suggest all of the features of claim 7. For example, Cluts fails to disclose the step of “selecting one or more of the channel profiles based on the received information concerning the received broadcast recording,” as is required by claim 7.

In support of its assertion that Cluts anticipates claim 7, the Office cites the following portions of Cluts: Col. 12, lines 41-67 and Col. 14, lines 12-50. For the convenience of the Examiner, these portions of Cluts are reproduced below.

The bottom region of the screen display 400 is used to select individual songs or playlists. A find button 420 is provided in order to allow a subscriber to select a specific song. When the find button is activated, the screen displays bins that appear to be similar to those found in music stores. In these bins, artists are listed in alphabetical order. When the subscriber selects a particular artist, the names of the artist's albums appear in chronological order, and are followed by an alphabetical listing of the artist's songs. The subscriber may use this feature to select a particular song or album. If the user selects a song, that song is loaded into a new playlist. If the user selects an album, all of the songs from that album are loaded into a new playlist.

The screen display 400 also includes a plurality of playlist buttons 425, which allow the subscriber to select a playlist. As described briefly above, a playlist is a collection of songs. Playlists may be generated in a variety of different ways. For example, various types of playlists may be provided by the service provider or other publishers. In addition, a subscriber may build a playlist one song at a time using the find button 420. A subscriber may also communicate with the preferred interactive network via a personal computer. When connected in this manner, the subscriber may use the personal computer to create and name playlists, perform abstract music searches or queries, etc. Those skilled in the art will appreciate that the interface provided by a personal computer is much more efficient for these tasks than a cumbersome on-screen interface that relies on input from a remote control unit.

Col. 12, lines 41-67.

Generally described, the "more like" function of the present invention provides systems and methods for using a seed song (e.g., the current song) to add new songs to a playlist. This is

accomplished on the basis of subjective style classifications and style weightings that are associated with the songs in the audio content database.

The "more like" function allows for the context based selection of subjective material. More particularly, the "more like" function allows a subscriber to locate additional songs on the basis of subjective decisions that have been made regarding the styles of the songs. In order to work properly, the subscriber must be able to predict the output of the "more like" function to some extent. In other words, the "more like" functions must find songs that most subscribers would agree are "similar" to the seed song.

Those skilled in the art will appreciate that it is subjective content that complicates the classification of information. Systems that classify only objective content are easily implemented. For example, songs are easily classified and identified by their title and artist. However, systems that accurately and predictably classify and search subjective content are more complex. In this sense, the present invention is applicable to any systems that classify and select programming information having subjective content. However, in the preferred system, the invention is described in the context of musical selections.

In the present invention, the subjective content associated with each song is embodied in style tables, which are tools for classifying each song's subjective content. Each song can be associated with any number of different styles. The editor that creates the style table must determine how important each style is to the description of each song. This is reflected by weighting each style as it pertains to each song. Thus, the process of creating a style table for an artist involves two steps: (1) creating the list of possible style categories; and (2) assigning weightings to each style category. Both of these steps are performed by the editor that creates the style table.

Col. 14, lines 12-50.

Applicants respectfully submit that Cluts does not disclose “selecting ... [a] channel profile[] based on the received information concerning the received broadcast recording and ... modifying ... the selected profile[].” Cluts merely discloses: (1) a feature that enables a user to select individual songs or playlists and (2) a “more like” feature that uses a “seed song” to add new songs to a playlist (more particularly, the “more like” feature allows a user to locate additional songs on the basis of subjective decisions that have been made regarding the styles of the songs.).

Accordingly, even if we assume a playlist is “profile” (it is not for the reasons given above), Cluts does not disclose that the user selects a playlist based on information concerning a received broadcast recording and then modifying the selected playlist, as is required by claim 7. There is simply no disclosure in Cluts of a user selecting a playlist based on a received broadcast recording and then modifying the selected playlist. Accordingly, even if we assume for the sake of argument that a playlist is a “profile,” Cluts does not disclose all the features of claim 7. Applicants, therefore, respectfully request that the rejection of claim 7 be withdrawn.

Dependent Claim 8

Claim 8 depends from claim 7. Thus, claim 8 is patentable for at least the same reasons given above with respect to claims 7 and 1.

Independent Claim 12

Like claim 1, claim 12 requires the step of “modifying ... [a] profile[] in response to the user indicating that the user likes or does not like the received broadcast recording,” Accordingly, for the reason give above with respect to claim 1, claim 12 is not anticipated by Cluts.

Independent Claim 16

Like claim 1, claim 16 requires the step of “modifying at least one of the one or more profiles in response to the user indicating that the user likes or does not like the broadcast

recording." Accordingly, for the reason give above with respect to claim 1, claim 16 is patentable over Cluts.

Additionally, Cluts does not disclose "using the information in one of the profiles [associated with a personalized channel] to create a playlist," as is required by claim 16. The Office contends that Cluts discloses this feature. In support of its contention, the Office refers to the following portion of Cluts: column 12, line 41 through column 13, line 7. For the convenience of the Examiner, this portion of Cluts is reproduced below.

The bottom region of the screen display 400 is used to select individual songs or playlists. A find button 420 is provided in order to allow a subscriber to select a specific song. When the find button is activated, the screen displays bins that appear to be similar to those found in music stores. In these bins, artists are listed in alphabetical order. When the subscriber selects a particular artist, the names of the artist's albums appear in chronological order, and are followed by an alphabetical listing of the artist's songs. The subscriber may use this feature to select a particular song or album. If the user selects a song, that song is loaded into a new playlist. If the user selects an album, all of the songs from that album are loaded into a new playlist.

The screen display 400 also includes a plurality of playlist buttons 425, which allow the subscriber to select a playlist. As described briefly above, a playlist is a collection of songs. Playlists may be generated in a variety of different ways. For example, various types of playlists may be provided by the service provider or other publishers. In addition, a subscriber may build a playlist one song at a time using the find button 420. A subscriber may also communicate with the preferred interactive network via a personal computer. When connected in this manner, the subscriber may use the personal computer to create and name playlists, perform abstract music searches or queries, etc. Those skilled in the art will appreciate that the interface provided by a personal computer is much more efficient for these tasks than a cumbersome on-screen interface that relies on input from a remote control unit. Those skilled in the art will also appreciate that playlists need not be

limited to songs. Playlists can include collections of news stories, movies, and other types of programming information. The five playlist buttons 425 are similar to the preset buttons on car radio and indicate the subscriber's five favorite playlists.

Cluts at col. 12, line 41 - col. 13, line 7.

As is evident from the above portion of Cluts, Applicant admits that Cluts discloses creating a playlist. However, nowhere does Cluts disclose that the playlist is created "using the information in one of the profiles [that is associated with a personalized channel]," as is explicitly required by claim 16.

In fact, Cluts does not even disclose a profile that is associated with a personalized channel. Cluts merely discloses an on-demand system that enables the user to create playlists by selecting songs or albums and/or obtain a playlist that is "provided by the service provider or other publishers." *Cluts at col. 12, line 58-59.*

Applicants, therefore, respectfully request that the rejection of claim 16 be withdrawn for this additional reason.

Independent Claim 18

Claim 18 is similar to claim 1. Thus, the above remarks for claim 1 apply to claim 18.

Dependent claims 19-20, 22-25

Claims 19-20 and 22-25 depend from claim 18 and are patentable for at least the same reasons as claim 18.

Independent Claim 27

Claim 27 is similar to claim 12. Thus, the above remarks for claim 12 apply equally to claim 27.

Independent Claim 29

Claim 29 is similar to claim 16. Thus, the above remarks for claim 16 apply equally to claim 29.

Dependent Claims 32-34

Claims 32 and 34 depend from claim 1 and are patentable for at least the same reasons as claim 1.


Rejection of claims 4, 5, 9-11, 13-15, 17, 21, 26, 28 and 30 under 35 U.S.C. 103

Claims 4, 5, 9-11, 13-15, 17, 21, 26, 28 and 30 depend from one of the independent claims discussed above. Accordingly, these claims are patentable for at least the reasons given above with respect to the independent claim from which it depends.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections, and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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